

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT COURT

MARK POVIJUA,

Plaintiff,

v.

Cause No. D-1116-CV-2016-01251

KENDRICK COSBY, COSBY TRUCKING, INC.,
and J C HUNT COMPANY, INC.,

Defendants.

COMPLAINT FOR PERSONAL INJURY

COMES NOW Plaintiff Mark Povijua, by and through his counsel, Keller & Keller, LLC,
and for his Complaint for Personal Injury, states as follows:

PARTIES AND JURISDICTION

1. Plaintiff Mark Povijua is a resident of Farmington, San Juan County, New Mexico.
2. Upon information and belief, Defendant Kendrick Cosby is a resident of Blanding, San Juan County, Utah.
3. Defendant Cosby Trucking, Inc. (hereinafter "Defendant Cosby Trucking") is a foreign corporation located in Blanding, San Juan County, Utah, does not have an authorized agent in New Mexico, and can be served with process through its registered agent, Dennis G. Cosby, 601 S 200 E, Blanding, UT 84511.
4. Defendant J C Hunt Company, Inc. (hereinafter "Defendant J C Hunt") is a foreign corporation located in Blanding, San Juan County, Utah, does not have an authorized agent in New Mexico, and can be served with process through its registered agent, Carl Hunt, 1261 S Main St., Blanding, UT 84511.

EXHIBIT A

5. The subject of this lawsuit is a commercial vehicle versus pedestrian crash that occurred in San Juan County, New Mexico.

6. This Court is the proper venue for this matter to be heard, this Court has personal jurisdiction over all parties involved, and this Court has subject matter jurisdiction regarding the crash which forms the basis of Plaintiff's Complaint.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

7. On or about October 9, 2015, Plaintiff was walking along westbound US 64, outside of the active lane for westbound vehicle traffic, when he was struck by a commercial vehicle (tractor pulling a fuel tanker) driven by Defendant Kendrick Cosby.

8. Upon information and belief, Defendant Kendrick Cosby was an employee of Defendant Cosby Trucking and/or Defendant J C Hunt at the time of the crash.

9. Upon information and belief, Defendant Cosby Trucking and/or Defendant J C Hunt owned or leased the commercial vehicle that Defendant Kendrick Cosby was driving at the time of the crash.

10. Defendant Kendrick Cosby had full control, responsibility, and use of the commercial vehicle he was driving at the time of the crash.

11. Defendant Kendrick Cosby had permission to drive the subject commercial vehicle at the time of the crash.

12. As a result of the crash set forth above, Plaintiff suffered injuries and damages.

COUNT I – NEGLIGENCE, NEGLIGENCE PER SE, AND RESPONDEAT SUPERIOR

13. Plaintiff incorporates the allegations contained in Paragraphs 1 through 12 as if fully set out herein.

14. At all times relevant, Defendant Kendrick Cosby was an agent, and/or servant of

Defendant Cosby Trucking and/or Defendant J C Hunt, and was acting in the course and scope of that relationship and in furtherance of the legitimate business activities of Defendant Cosby Trucking and/or Defendant J C Hunt.

15. Defendant Cosby Trucking and/or Defendant J C Hunt are liable for the injuries and damages sustained by Plaintiff by application of the Doctrine of Respondeat Superior.

16. Defendant Kendrick Cosby had a duty to the general public, specifically Plaintiff, to exercise ordinary care while operating a vehicle.

17. Defendant Kendrick Cosby failed to exercise ordinary care while operating the commercial vehicle thus causing the subject crash.

18. Defendant Kendrick Cosby failed to use ordinary care that a reasonable and prudent commercial driver would have under the same or similar circumstances, and thus was negligent.

19. At the time of the subject collision, there were in force and effect certain New Mexico statutes that were violated by Defendant Kendrick Cosby, including but not limited to, the following:

- a. NMSA § 66-7-3, Required obedience to traffic laws;
- b. NMSA § 66-7-301. Speed regulation;
- c. NMSA § 66-7-303.1. Construction zones; traffic control devices; penalty;
- d. NMSA § 66-7-337. Drivers to exercise due care;
- e. NMSA § 66-8-114. Careless driving;
- f. Any other federal, state, or local statute or regulation governing the control of vehicles while driving, including the FMCSR.

20. Plaintiff was in the class of persons intended to be protected by the above laws, as

contemplated by the New Mexico Legislature, Department of Transportation, or other governing body.

21. Plaintiff was a member of the class of persons sought to be protected by said statutes.

22. Defendant Kendrick Cosby violated said statutes without just cause or excuse.

23. As a direct and proximate result of the negligence of Defendant Kendrick Cosby, Plaintiff has suffered damages in the form of personal injury, pain and suffering, lost wages, loss of enjoyment of activities, loss of household services, hedonic damages, or loss of the value of life itself, as well as reasonable expenses for necessary medical care received in the past and reasonably certain to be received in the future, and nonmedical expenses required as a result of the injury and reasonably certain to be required in the future, all to his damage in an amount to be determined by the Court at trial.

WHEREFORE, Plaintiff prays for judgment against Defendants in an amount adequate to compensate Plaintiff for the losses which have been suffered, for the costs of this action, for pre-judgment and post-judgment interest, and for all other relief which is just and proper.

Respectfully submitted,

KELLER & KELLER, LLC

/s/ Chris Supik

Chris Supik
Attorneys for Plaintiff
505 Marquette Ave., N.W., Suite 1300
Albuquerque, New Mexico 87102
Telephone (505) 938-2300
Facsimile (505) 938-2301

STATE OF NEW MEXICO
COUNTY OF SAN JUAN
ELEVENTH JUDICIAL DISTRICT COURT

MARK POVIJUA,

Plaintiff,

v.

Cause No. D-1116-CV-2016-01251

KENDRICK COSBY, COSBY TRUCKING, INC.,
and J C HUNT COMPANY, INC.,

Defendants.

JURY DEMAND

COME NOW, the Plaintiff, by and through his undersigned attorneys, KELLER & KELLER, LLC, pursuant to Rule 1-038, NMRA, 2001, hereby demand a trial by jury of six (6) persons in this case and herewith deposits the sum of One Hundred Fifty Dollars (\$150.00).

Respectfully submitted,

KELLER & KELLER, LLC

Electronically filed
/s/ Chris Supik

CHRIS SUPIK
Attorneys for Plaintiff
505 Marquette NW, Ste. 1300
Albuquerque, NM 87102
Telephone: (505) 938-2300
Facsimile: (505) 938-2301
csupik@2keller.com

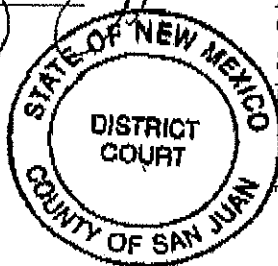
SUMMONS	
District Court: ELEVENTH JUDICIAL San Juan County, New Mexico Court Address: 103 S. Oliver Dr. Aztec, NM 87410 Court Telephone No.: 505-334-6151	Case Number: D-1116-CV-2016-01251 Assigned Judge: Bradford J. Dalley
Plaintiff(s): MARK POVIJUA, v. Defendant(s): KENDRICK COSBY, COSBY TRUCKING, INC., and J C HUNT COMPANY, INC.	Defendant - Name: COSBY TRUCKING, INC. c/o Dennis G. Cosby Reg. Agent Address: 601 S. 200 E Blanding, UT 84511

TO THE ABOVE NAMED DEFENDANT(S): Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
 2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA) The Court's address is listed above.
 3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
 4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
 5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
 6. If you need an interpreter, you must ask for one in writing.
 7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6657; or 1-505-797-6066.
- Dated at Aztec, New Mexico, this 11th day of October, 2016.

Weldon J. Neff
CLERK OF DISTRICT COURT

By *[Signature]*



/s/ Chris Supik
Chris Supik, Esq.
Signature of Attorney for Plaintiff/Pro Se Party
Name: Chris Supik
Address: KELLER & KELLER, LLC
605 Marquette NW, Suite 1300
Telephone No.: (505) 938-2300

Fax No.: (505) 938-2301

Email Address: csupik@2keller.com

THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 OF THE NEW MEXICO
RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS.

RETURN¹

STATE OF NEW MEXICO)
)ss
COUNTY OF _____)

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in _____ county on the _____ day of _____, _____, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

(check one box and fill in appropriate blanks)

☐ to the defendant _____ (*used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint*)

☐ to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA (*used when service is by mail or commercial courier service*).

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

☐ to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, (*used when the defendant is not presently at place of abode*) and by mailing by first class mail to the defendant at _____ (*insert defendant's last known mailing address*) a copy of the summons and complaint.

☐ to _____, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at _____ (*insert defendant's business address*) and by mailing the summons and complaint by first class mail to the defendant at _____ (*insert defendant's last known mailing address*).

☐ to _____, an agent authorized to receive service of process for defendant _____.

☐ to _____, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant _____ (*used when defendant is a minor or an incompetent person*).

[] to _____ (name of person), _____, (title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: _____

Signature of person making service

Title (if any)

Subscribed and sworn to before me this _____ day of _____, _____²

Judge, notary or other officer
authorized to administer oaths

Official title

USE NOTE

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.
2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.

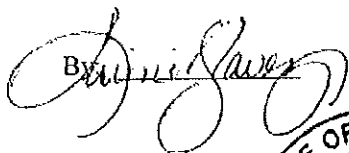
[Adopted effective August 1, 1988; as amended by Supreme Court Order 05-8300-01, effective March 1, 2005; by Supreme Court Order 07-8300-16, effective August 1, 2007; by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013.]

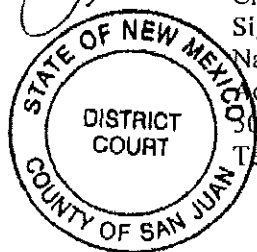
SUMMONS	
District Court: ELEVENTH JUDICIAL San Juan County, New Mexico Court Address: 103 S. Oliver Dr. Aztec, NM 87410 Court Telephone No.: 505-334-6151	Case Number: D-1116-CV-2016-01251 Assigned Judge: Bradford J. Dalley
Plaintiff(s): MARK POVIJUA, v. Defendant(s): KENDRICK COSBY, COSBY TRUCKING, INC., and J C HUNT COMPANY, INC.	Defendant - Name: JC HUNT COMPANY, INC. c/o Carl Hunt Reg. Agent Address: 1261 S. Main Street Blanding, UT 84511

TO THE ABOVE NAMED DEFENDANT(S): Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
 2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA) The Court's address is listed above.
 3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
 4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
 5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
 6. If you need an interpreter, you must ask for one in writing.
 7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6657; or 1-505-797-6066.
- Dated at Aztec, New Mexico, this 11th day of October, 2016.

Weldon J. Neff
CLERK OF DISTRICT COURT

By 



/s/ Chris Supik
Chris Supik, Esq.
Signature of Attorney for Plaintiff/Pro Se Party
Name: Chris Supik
Address: KELLER & KELLER, LLC
505 Marquette NW, Suite 1300
Telephone No.: (505) 938-2300

Fax No.: (505) 938-2301

Email Address: csupik@2keller.com

THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 OF THE NEW MEXICO
RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS.

RETURN¹

STATE OF NEW MEXICO)
)ss
COUNTY OF _____)

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in _____ county on the _____ day of _____, _____, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

(check one box and fill in appropriate blanks)

☐ to the defendant _____ *(used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint)*

☐ to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA *(used when service is by mail or commercial courier service).*

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

☐ to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, *(used when the defendant is not presently at place of abode)* and by mailing by first class mail to the defendant at _____ *(insert defendant's last known mailing address)* a copy of the summons and complaint.

☐ to _____, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at _____ *(insert defendant's business address)* and by mailing the summons and complaint by first class mail to the defendant at _____ *(insert defendant's last known mailing address).*

☐ to _____, an agent authorized to receive service of process for defendant _____.

☐ to _____, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant _____ *(used when defendant is a minor or an incompetent person).*

[] to _____ (name of person), _____, (title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: _____

Signature of person making service

Title (if any)

Subscribed and sworn to before me this _____ day of _____, _____²

Judge, notary or other officer
authorized to administer oaths

Official title

USE NOTE

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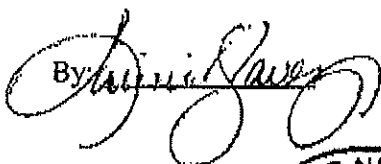
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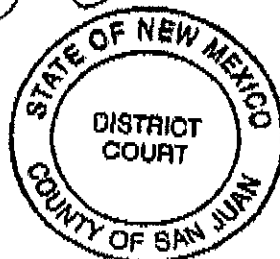
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Plaintiff(s): MARK POVIJUA, v. Defendant(s): KENDRICK COSBY, COSBY TRUCKING, INC., and J C HUNT COMPANY, INC.	Defendant - Name: KENDRICK COSBY Address: 554 W. 100 th South Blanding, UT 84511

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 3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
 4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
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Signature of Attorney for Plaintiff/Pro Se Party
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STATE OF NEW MEXICO)
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COUNTY OF _____)

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in _____ county on the _____ day of _____, _____, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

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Fees: _____

Signature of person making service

Title (if any)

Subscribed and sworn to before me this _____ day of _____, _____²

Judge, notary or other officer
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Official title

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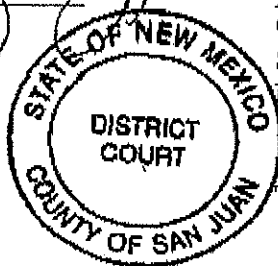
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Dated at Aztec, New Mexico, this 11th day of October, 2016.

Weldon J. Neff
CLERK OF DISTRICT COURT

By *[Signature]*



/s/ Chris Supik

Chris Supik, Esq.
Signature of Attorney for Plaintiff/Pro Se Party
Name: Chris Supik
Address: KELLER & KELLER, LLC
605 Marquette NW, Suite 1300
Telephone No.: (505) 938-2300

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Signature of person making service

Title (if any)

Subscribed and sworn to before me this _____ day of _____, _____²

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[Adopted effective August 1, 1988; as amended by Supreme Court Order 05-8300-01, effective March 1, 2005; by Supreme Court Order 07-8300-16, effective August 1, 2007; by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013.]